



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Suzanne Lee Chan, Vice Mayor
Anu Natarajan
Bill Harrison
Dominic Dutra

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Mark Danaj, Assistant City Manager

Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Annabell Holland, Community Services Director
Norm Hughes, City Engineer
Bruce Martin, Fire Chief
Nadine Nader, City Clerk/Asst. to City Manager
Jim Pierson, Public Works Director
Jeff Schwob, Interim Community Dev. Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Brian Stott, Human Resources Director
Lori Taylor, Economic Development Director
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

**NOTICE AND AGENDA OF SPECIAL MEETING
CLOSED SESSION
CITY OF FREMONT**

DATE: Tuesday, September 6, 2011

TIME: 6:00 p.m.

LOCATION: Fremont City Council Chambers, 3300 Capitol Avenue, Building A, Fremont, CA

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT:

Any person desiring to speak on an item listed on this Notice, may do so now. The Mayor will limit the length of your presentation and each speaker may only speak once on each item.

CONFERENCE WITH LABOR NEGOTIATOR: The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director and Harvey Levine, City Attorney as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Association of Management Employees
Fremont Association of City Employees
Operating Engineers Local Union No. 3
Teamsters Local 856
Fremont Police Management Employees
Professional Engineers and Technicians Association

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

This Closed Session is authorized by subdivision (a) of Section 54956.9 of the Government Code and will pertain to existing litigation in two matters.

City of Fremont v. Citigroup Global Markets, et al. Case No. CV090926JCS
(consolidated with Case No. 09-MD-2017 (S.D.N.Y.)

and

In re Bankruptcy proceedings of Lehman Brothers Holdings, Inc., et al.
Case No. 08-13555 (JMP)

This Special Meeting is being called by Mayor Wasserman.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
SEPTEMBER 6, 2011
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – None.*
- 2.3 *Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for Planned District P-2005-80 (VILLA D'ESTE) Located at the Southeast Corner of Ardenwood Boulevard and Paseo Padre Parkway in the Northern Plain Planning Area*

RECOMMENDATION: Adopt ordinance.

- 2.4 *Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning Property Located at the Southeast Corner of the Intersection of Mowry Avenue and Guardino Drive from Multi-Family Residence District (R-3-18) to Planned District P-2011-154*

RECOMMENDATION: Adopt ordinance.

2.5 *PARTIAL RELEASE OF IMPROVEMENT SECURITY, TRACT 7759 AT 40900-40990 GRIMMER BOULEVARD*

Consider Approval of the Partial Release of Improvement Security Required by the Improvement Agreement for Tract 7759, Based on the Partial Completion of Improvements

Contact Person:

<i>Name:</i>	<i>Kelly Reynolds</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Civil Engineer I</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4737</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>kreynolds@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATION: Approve the partial release of improvement security for Tract 7759 private improvements in the amount of \$1,589,000, retaining \$628,000 in security until acceptance of the private improvements by the City Engineer.

2.6 *AIR PRODUCTS FRANCHISE EXTENSION*

Public Hearing (Published Notice) to Consider Introducing an Ordinance for a One-Year Extension of a Franchise Agreement with Air Products and Chemicals, Inc.

Contact Person:

<i>Name:</i>	<i>Randy Sabado</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Real Property Manager</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>494-4715</i>	<i>494-4748</i>
<i>E-Mail:</i>	<i>rsabado@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATION: Hold a public hearing and introduce an ordinance extending a Franchise Agreement with Air Products and Chemicals, Inc., for a one-year term.

2.7 *ANNUAL APPROVAL OF INVESTMENT POLICY*

Annual Delegation of Authority to City Treasurer to Manage Investments, and Annual Approval of Investment Policy

Contact Person:

<i>Name:</i>	<i>Norma Cutter</i>	<i>Harriet Commons</i>
<i>Title:</i>	<i>Treasury Analyst</i>	<i>Finance Director/Treasurer</i>
<i>Dept.:</i>	<i>Finance</i>	<i>Finance</i>
<i>Phone:</i>	<i>510-494-4637</i>	<i>510-284-4010</i>
<i>E-Mail:</i>	<i>ncutter@fremont.gov</i>	<i>hcommons@fremont.gov</i>

RECOMMENDATION: Adopt a resolution delegating the City Council's authority to invest and reinvest public funds, and to sell or exchange securities so purchased, to the Finance Director/City Treasurer for one year or until earlier revoked by the City Council; and approving the City's investment policy statement for FY 2011/12.

2.8 *PROFESSIONAL ENGINEERS AND TECHNICIANS ASSOCIATION MOU*
Consideration of a Resolution Approving a New Memorandum of Understanding
(2011-2013) with the Professional Engineers and Technicians Association (PETA)

Contact Person:

<i>Name:</i>	<i>Brian Stott</i>	<i>Mark Danaj</i>
<i>Title:</i>	<i>Director</i>	<i>Assistant City Manager</i>
<i>Dept.:</i>	<i>Human Resources</i>	<i>City Manager's Office</i>
<i>Phone:</i>	<i>510-494-4660</i>	<i>510-284-4000</i>
<i>E-Mail:</i>	<i>bstott@fremont.gov</i>	<i>mdanaj@fremont.gov</i>

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) for the period of July 1, 2011 through June 30, 2013 between the City and the Professional Engineers and Technicians Association (PETA) and authorize the City Manager to execute the MOU.

2.9 *FREMONT ASSOCIATION OF MANAGEMENT EMPLOYEES MOU*
Consideration of a Resolution approving a new Memorandum of Understanding
(2011-2013) with the Fremont Association of Management Employees (FAME)

Contact Person:

<i>Name:</i>	<i>Brian Stott</i>	<i>Mark Danaj</i>
<i>Title:</i>	<i>Director</i>	<i>Assistant City Manager</i>
<i>Dept.:</i>	<i>Human Resources</i>	<i>City Manager's Office</i>
<i>Phone:</i>	<i>510-494-4660</i>	<i>510-284-4000</i>
<i>E-Mail:</i>	<i>bstott@fremont.gov</i>	<i>mdanaj@fremont.gov</i>

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) for the period of July 1, 2011 through June 30, 2013 between the City and the Fremont Association of Management Employees (FAME) and authorize the City Manager to execute the MOU.

2.10 *TEAMSTERS, LOCAL 856 MEMORANDUM OF UNDERSTANDING (MOU)*
Consideration of a Resolution Approving a new Memorandum of Understanding
(2011 – 2013) with Teamsters Local 856 MOU

Contact Person:

<i>Name:</i>	<i>Brian Stott</i>	<i>Mark Danaj</i>
<i>Title:</i>	<i>Director</i>	<i>Assistant City Manager</i>
<i>Dept.:</i>	<i>Human Resources</i>	<i>City Manager's Office</i>
<i>Phone:</i>	<i>510-494-4660</i>	<i>510-284-4000</i>
<i>E-Mail:</i>	<i>bstott@fremont.gov</i>	<i>mdanaj@fremont.gov</i>

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) for the period of July 1, 2011 through June 30, 2013 between the City and Teamsters Local 856, and authorize the City Manager to execute the MOU.

3. CEREMONIAL ITEMS

- 3.1 Resolution: Joining the National Moment of Remembrance of the 10th Anniversary of September 11th.

4. PUBLIC COMMUNICATIONS

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – None.

PUBLIC FINANCING AUTHORITY – None. See separate cancellation notice. (lilac paper).

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

- 5.1 DUTRA PROPERTY REZONE/REVERSION TO ACREAGE –1481 MOWRY AVENUE (VACANT LOT)
Public Hearing (Published Notice) to Consider Final Tract Map 8089 for a Reversion to Acreage of a Vacant 0.61-Acre Parcel which was Previously Approved for a 10-Lot Residential Subdivision, and a Rezoning of the Property from Planned District P-2001-174 to Multi-Family Residence, R-3-23. (PLN2011-00273)

Contact Person:

Name:	Stephen Kowalski	Barbara Meerjans
Title:	Associate Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4451
E-Mail:	skowalski@fremont.gov	bmeerjans@fremont.gov

RECOMMENDATION:

1. Hold public hearing;
2. Find that the proposed rezoning is categorically exempt from the California Environmental Quality Act (CEQA) per Guideline 15061(b)(3) in that it is not a

- project that has the potential to have a significant impact on the environment, and that the proposed Reversion to Acreage is exempt from CEQA per Guideline 15305 which exempts minor alterations in land use limitations;
3. Find the project consistent with the General Plan for the reasons enumerated in this staff report;
 4. Determine that the findings required pursuant to FMC Section 8-1705 and §66499.16 of the Subdivision Map Act can be made in support of the proposed Reversion to Acreage based on the findings set forth in Exhibit “C”;
 5. Adopt a resolution approving Final Map 8089, a Reversion to Acreage of Tract 7479, as shown on Exhibit “B”, based on the findings set forth in Exhibit “C”;
 6. Find that the proposed Rezoning fulfills the applicable requirements set forth in Section 8-23108 of the Fremont Municipal Code based on the findings and subject to the conditions set forth in Exhibit “C”;
 7. Introduce an ordinance rezoning the property from Precise Planned District (P-2001-174) to Multi-Family Residence, R-3-23, as shown on Exhibit “A”; and
 8. Direct staff to prepare and the clerk to publish a summary of the ordinance.

6. REPORT FROM CITY ATTORNEY

- 6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS – None.

8. COUNCIL COMMUNICATIONS

- 8.1 Council Referrals

- 8.1.1 MAYOR WASSERMAN REFERRAL: Appointments to the Senior Citizens Commission and the Youth Advisory Commission.

- 8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING

SEPTEMBER 6, 2011

***2.3 Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for Planned District P-2005-80 (VILLA D'ESTE) Located at the Southeast Corner of Ardenwood Boulevard and Paseo Padre Parkway in the Northern Plain Planning Area**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

***2.4 Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning Property Located at the Southeast Corner of the Intersection of Mowry Avenue and Guardino Drive from Multi-Family Residence District (R-3-18) to Planned District P-2011-154**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

***2.5 PARTIAL RELEASE OF IMPROVEMENT SECURITY, TRACT 7759 AT 40900-40990 GRIMMER BOULEVARD**

Consider Approval of the Partial Release of Improvement Security Required by the Improvement Agreement for Tract 7759, Based on the Partial Completion of Improvements

Contact Person:

Name:	Kelly Reynolds	Norm Hughes
Title:	Civil Engineer I	City Engineer
Dept.:	Public Works	Public Works
Phone:	510-494-4737	510-494-4748
E-Mail:	kreynolds@fremont.gov	nhughes@fremont.gov

Executive Summary: The purpose of this report is to request City Council approval of a partial release of improvement security for faithful performance associated with construction of private subdivision improvements in Tract 7759. The improvement security was furnished by the subdivider of Tract 7759, Regis Homes of Northern California, in accordance with the “Improvement Agreement for Private Street, Tract 7759,” approved by Council on March 13, 2007. The subdivider has substantially completed the required private improvements and has requested a release of \$1,589,000 from the original performance bond of \$2,217,000, with the remaining \$628,000 to be held until acceptance of the tract improvements.

BACKGROUND: Tract 7759 is located on the east corner of Grimmer Boulevard and Irvington Avenue in the Irvington Planning Area. The project includes 100 townhome style units and a 68-unit condominium podium building. The final map, improvement plans, and agreements were approved by City Council on March 13, 2007.

The private improvements required by the subdivision plans and contained in the Improvement Agreement have been substantially completed. The bond amount submitted as security for the construction of the on-site improvements is \$2,217,000. The bond amount submitted as security for the construction of public improvements is \$429,000.

DISCUSSION/ANALYSIS: Fremont Municipal Code, Section 8-1426, Financial Guarantees, provides, in relevant part, that: “The Council may permit the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses.” If the Council permits, a partial release of the improvement security may be made prior to acceptance of the improvements by the City Engineer. The developer has asked the City Council to approve the partial release of the improvement security for on-site improvements based upon the construction completed to date. The developer has not requested partial release of the improvement security for public improvements.

City construction staff has been inspecting the project during construction and has determined the subject improvements are substantially complete. Based upon the verifiable progress of construction, staff recommends a partial release of improvement security for the private improvements, with the balance held until final inspections and acceptance by the City Engineer.

In accordance with the Subdivision Map Act, a reduction in the improvement security can be considered if the cost of the remaining improvements does not exceed 20% of the original bond amount, and the resulting security to be retained can be 200% of the cost of the remaining improvements. In this case, the amount estimated for completion of private improvements is about \$314,000 or 14%, of the original bond amount. Staff recommends retaining security equal to 200% of the estimated remaining improvement costs, or \$628,000 of security until completion and acceptance of the subdivision improvements.

FISCAL IMPACT: None.

ENVIRONMENTAL REVIEW: The approved Final Map and Improvement Plans are consistent with the original project description, scope of work, and identified mitigations of the March 21, 2006 City Council adopted Mitigated Negative Declaration. No further environmental review is required.

ENCLOSURE: [Informational Item 1: Copy of Council report - Approval of Final Map Tract 7759 at 40900-40990 Grimmer Boulevard, Regis Homes of Northern California](#)

RECOMMENDATION: Approve the partial release of improvement security for Tract 7759 private improvements in the amount of \$1,589,000, retaining \$628,000 in security until acceptance of the private improvements by the City Engineer.

***2.6 AIR PRODUCTS FRANCHISE EXTENSION**

Public Hearing to Consider Introducing an Ordinance for a One-Year Extension of a Franchise Agreement with Air Products and Chemicals, Inc.

Contact Person:

Name:	Randy Sabado	Norm Hughes
Title:	Real Property Manager	City Engineer
Dept.:	Public Works	Public Works
Phone:	494-4715	494-4748
E-Mail:	rsabado@fremont.gov	nhughes@fremont.gov

Executive Summary: The purpose of this report is to request that the City Council hold a public hearing and introduce an ordinance extending a franchise agreement with Air Products and Chemicals, Incorporated, a Delaware Corporation, for a one-year term. The current franchise expired on September 3, 2011. The purpose of the franchise is to permit Air Products to install, construct, maintain and use under, along, across or upon the public streets, and rights-of-way within the City, all pipes and appurtenances for transmitting and distributing nitrogen gas. The one-year extension will allow staff the time to negotiate a long-term franchise agreement with the grantee.

BACKGROUND: On June 3, 1986, the City Council adopted Ordinance No. 1725, which established the terms and conditions for the granting of franchises for the non-exclusive use of City right-of-way for the purpose of transmitting and/or distributing nitrogen gas.

On August 5, 1986, the City Council adopted Ordinance No. 1732, by which the City granted a fifteen-year franchise to Air Products and Chemicals, Inc., a Delaware Corporation, and its wholly-owned subsidiary, Air Products Manufacturing Corporation, a Delaware Corporation, and on February 25, 2003, the City Council adopted Ordinance No. 2497 granting a ten-year extension to the terms of the franchise, with an expiration date of September 3, 2011. On July 26, 2011, at the regular City Council meeting, the City Council adopted a resolution of intent to grant a one-year franchise extension.

DISCUSSION/ANALYSIS: The Air Products pipeline runs for a distance of approximately five miles, located primarily in the southern part of the City within various City streets such as Page Avenue, Milmont Drive and Kato Road, providing nitrogen gas to Solelectron, Seagate and LAM Research. Nitrogen gas is a non-combustible gas used in the semiconductor industry and makes up 78% of the earth's atmosphere.

Air Products paid the City an annual fee of approximately \$37,000 in 2010, which is based upon the rates established under Ordinance No. 1725 of \$650 for each mile of pipeline installed within the public streets and an annual fee of \$125 per inside diameter inch of each customer service lateral, annually increased at the rate of 7% since the initial franchise grant.

The franchise expired on September 3, 2011. Staff has had initial discussions with Air Products and is requesting a one-year extension to the agreement, retroactive to September 3, 2011, to allow time to negotiate a new long-term franchise. California Public Utilities Code Section 6232 calls for the adoption of a resolution of intent to grant a franchise, which would include an extension thereof. On July 26,

2011, at the regular City Council meeting, the City Council adopted a resolution of intent to grant a one-year franchise extension. After adoption of the resolution of intent, a public hearing notice must be published within 15 days, and a public hearing must be held between 20 and 60 days after the passage of the resolution. The public hearing notice was published in the Argus newspaper on August 5 and 6, 2011.

FISCAL IMPACT: The extension of this franchise agreement will generate approximately \$37,000 annually to the General Fund.

ENVIRONMENTAL REVIEW: The pipeline is an existing facility and therefore an extension of the franchise agreement would be considered a Class I categorical exemption.

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Hold a public hearing and introduce an ordinance extending a Franchise Agreement with Air Products and Chemicals, Inc., for a one-year term.

***2.7 ANNUAL APPROVAL OF INVESTMENT POLICY**

Annual Delegation of Authority to City Treasurer to Manage Investments, and Annual Approval of Investment Policy

Contact Person:

Name:	Norma Cutter	Harriet Commons
Title:	Treasury Analyst	Finance Director/Treasurer
Dept.:	Finance	Finance
Phone:	510-494-4637	510-284-4010
E-Mail:	ncutter@fremont.gov	hcommons@fremont.gov

Executive Summary: The City Council may elect to delegate its authority to invest and reinvest City funds to the City Treasurer for renewable one year periods pursuant to California Government Code section 53607. Government Code section 53646(a)(2) provides for the City Council's annual consideration of the City's investment policy at a public meeting. The City Council delegated investment authority to the Treasurer and approved the City's investment policy for fiscal year 2010/11 on June 1, 2010. Since then, the Treasurer has applied the policies, practices, and strategies described below to assure daily operational compliance with the investment policy standards.

BACKGROUND: The City Council is expressly authorized to invest and manage the City's public funds by Government Code section 53600.3. Government Code section 53607 authorizes the City Council to delegate its responsibility for conducting investment transactions to the City Treasurer. The proposed policy and delegation of authority was not presented to the City Council in June 2011 because updated information from the State Treasurer's Office about changes in State law affecting investment transactions was not available until late August. In the absence of Council action, the existing policy and delegation have remained in effect. This proposed policy and delegation will be effective as of July 1, 2011, and will continue in effect throughout fiscal year 2011/12 if adopted by the City Council.

DISCUSSION/ANALYSIS: Reviewing the monthly Treasurer's transaction reports ("Treasurer's Report") is one of the activities by which the City Council exercises its ultimate responsibility for the investment function. Each Treasurer's Report describes the portfolio's composition and recent performance, and reports the month's investment transactions. Within each Treasurer's Report, the Treasurer certifies that all investments were made in compliance with the investment policy and that there are adequate funds to pay City obligations for at least six months. The monthly reports also give updates on market conditions and the investment selection plan being used to implement the approved investment policy.

Once adopted by Council, the investment policy sets portfolio management objectives and practices, specifies allowable investment instruments, states the criteria for purchasing those securities, prohibits certain types of security purchases, and fixes the maximum investment horizon (generally five years). The Treasurer uses these guidelines to manage, safeguard and invest all public funds held by the City and the Redevelopment Agency, except for debt proceeds. Debt proceeds are invested in accordance with investment policies approved by the City Council when the debts were first issued. These investment transactions are executed by the trustees of the respective debt issues under the direction of City staff.

Proposed Amended Investment Policy: Although there are a number of proposed changes in the policy, only one of those is substantive. State law has changed to now no longer require local agencies to submit copies of their investment policies and treasurer's reports to the California Debt and Investment Advisory Commission ("CDIAC"). The other proposed changes are minor non-substantive edits to bring the policy into alignment with the model policy of the Association of Public Treasurers of the United States and Canada (upon which the original policy was based) and the Local Investment Guidelines published by CDIAC, and to add some additional definitions to the glossary. Other than the one substantive change described above, the proposed investment policy for FY 2011/12 is unchanged from the FY 2010/11 policy.

Investing Policy Implementation: Treasury Division practices are designed, and frequently monitored, to achieve the three key portfolio objectives: (1) safety, and (2) liquidity with (3) optimal portfolio yield. There are risks inherent in fixed income investing, such as market/interest rate risk, credit/default risk, reinvestment risk, and liquidity risk. Other portfolio management risk factors relate to errors, theft, poor judgment, and misappropriation. Treasury Division staff constantly identify, monitor, and manage portfolio risk factors in order to accomplish the portfolio objectives.

The Treasury Division's internal control structure is implemented through written procedures that cover (1) segregating the duties of investing, security custody, and recordkeeping; (2) cross-checking by accounting personnel; (3) reconciling bank and security accounts to the City's books; and (4) regular reporting. The City's independent outside auditors review the City's internal controls, test selected investment transactions and account balances, and report their findings (if any) to the City Council as part of their audit. The Treasurer reviews and ratifies every investment transaction and reviews each monthly Treasurer's Report before it is published.

Market risk, reinvestment risk, and credit risk are reduced, though they cannot be eliminated entirely. Credit risk is managed by only purchasing highly rated securities as permitted under investment policy guidelines. Market, reinvestment and credit risks are all managed by diversifying the portfolio in regards to average maturity, segment composition, issuers, and call structure.

Liquidity risk is managed by maintaining prudent balances in market accounts and in the State of California Local Agency Investment Fund (LAIF – a State-wide investment pool). These are very liquid investments, meaning that they can be accessed on short notice; generally one day or less. Other short-term investments with maturities of less than one year (high-grade commercial paper, bankers' acceptances, and U.S. Treasury bills) help the City maintain an adequate liquidity cushion.

Typically, the largest portion of the City's longer-term sub-portfolio is invested in government sponsored enterprise (GSE) notes and bonds. The GSEs are comprised of the Federal Home Loan Bank ("FHLB"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Farm Credit Bank ("FFCB"). GSE debt is rated Aaa and AAA by Moody's and Fitch, respectively, and AA+ by Standard & Poor's. The City also invests in medium term notes of five years and less issued by major corporations whose debt is rated Aa/AA or better at the time of purchase.

Debt instruments issued by Freddie Mac and Fannie Mae carry the rating agencies' highest Aaa/AAA ratings now only because they are backed by the U.S. Government. The federal government essentially

saved them through nationalization in late 2008. Their reserves fell below minimum standards because of the national mortgage crisis. Although the status of Freddie Mac and Fannie Mae remains unchanged (except that their federally funded losses continue to increase), all GSEs currently retain their Aaa/AAA credit ratings from Moody's and Fitch. Freddie Mac and Fannie Mae remain central to the federal government's plan to underwrite mortgage assistance to prevent further declines in the national housing markets.

The economic crisis has also caused some of the credit ratings on City-owned corporate notes to be downgraded during the recession. The credit ratings met policy guidelines when the investments were purchased, and all remain rated at least A/a. Rather than sell any investments at a loss, the City continues to hold these investments and monitor their credit status frequently. In particular, the City holds \$1 million in notes issued by AIG (maturing in November 2011). This corporation suffered a dramatic reversal of its fortunes in September 2008, became largely directly owned by the U.S. government, and has since seen its stock price and profits rebound as it remakes its business. Staff continues to believe it is better to hold this investment to its likely maturity than sell the debt at a substantial loss. In the meantime, these corporate notes are generating relatively high yields and are not subject to being called.

Market Context: All investors, including the City, act within the context of the larger financial markets. These financial markets essentially ceased functioning normally in September and October 2008, when Lehman Brothers literally fell into bankruptcy over the course of a weekend. Several of the largest financial institutions in the world either disappeared into the arms of purchasers (Wachovia Bank, Merrill Lynch, Countrywide Savings), or became wards of the federal government (AIG, Fannie Mae, Freddie Mac), or went out of business (Lehman Brothers, Washington Mutual Bank, Bear Stearns), or required massive infusions of capital from their federal government (Citibank, Bank of America, and national banks in the United Kingdom, Ireland, Iceland, and France).

During fiscal year 2009/10, the financial world was introduced to the PIIGS (Portugal, Ireland, Italy, Greece, and Spain) – all sovereign nations that appeared to be on the brink of defaulting on their debt and re-plunging the markets back into roiling turmoil. For now, with the backing of the International Monetary Fund (IMF) and the Euro-zone nations, further crisis has been averted, or at least delayed – although this matter continues to be in the news, a reflection of their tenuous situation.

The U.S. Central Bank, the Federal Reserve Bank (the Fed), lowered its target federal funds interest rate to a range of 0.00 – 0.25% in late 2008, and has since kept it there. Gross domestic product (GDP) collapsed into negative territory and millions of people lost their jobs as companies slashed payrolls in the fourth quarter of 2008 and the first quarter of 2009. As painful as this deep recession has been in the United States, it has caused even greater havoc to some foreign economies. These events are truly economic shocks of world-wide significance. Although there are some signs of recovery in the United States (positive GDP growth occurred in the eight quarters ending with the second quarter of 2011), there continue to be underlying weaknesses in the housing market, employment, and the federal government's budget. The economic future continues to be murky at best.

Inflation remained tame over the last fiscal year as production capacity was unused and labor markets felt little wage pressure due to the high unemployment rates (at times over 10% nationally and over 12% in California). The U.S. Treasury and the Fed continued to prop up the credit and housing markets, and

the U.S. Treasury has continued to sell its debt to willing buyers who are looking for the safe haven of the United States government. Interest rates on “safe” investments have been at rock bottom, with the 2-year U.S. Treasury Note yielding well under 1% for most of the fiscal year. LAIF, which reflects a broad range of investments, has seen its yield hover in the 0.44% - 0.52% range for much of the fiscal year.

Portfolio Yield Performance: Yields for both the City portfolio and its benchmarks fell throughout FY 2010/11 (through April 30). The City’s average monthly portfolio yield for April 2011 was 1.73%, compared to 2.39% for April 2010. The City’s annual cumulative yield through April 2011 is 1.89%, versus 2.84% one year earlier. By comparison, LAIF’s daily yield decreased from 0.54% in April 2010 to 0.46% at the end of April 2011.

The City’s portfolio was not spared from loss related to economic events. The City held \$2 million of Lehman Brothers commercial paper and \$2 million of their medium-term notes when that company filed for bankruptcy in September 2008. The City wrote these investments down to zero and recognized a loss in FY 2009/10 pending any potential recovery. The City has taken the following actions in pursuit of recovery: (1) filed its bankruptcy court claim, (2) sued Lehman’s accountants, debt underwriters, and corporate leaders in federal court for securities law violations and for making misrepresentations concerning Lehman’s financial condition, and (3) joined public entities from across the U.S. who also bought Lehman Brother’s debt in efforts to secure reimbursement from the U.S. Treasury’s Troubled Asset Recovery Program (TARP). Although the matter is progressing, neither the ultimate success of these efforts, nor the amount of recovery, nor the time until any recovery is received can be accurately assessed.

The dollar-weighted average maturity of the City’s portfolio decreased from 600 days at the end of April 2010 to 441 days at the end of April 2011. GSE issuers continue to redeem their callable bonds before the stated maturity dates at a furious pace. Much of this cash has been held in the money market account (which holds U.S. Treasury bills) and the Local Agency Investment Fund (LAIF) pending clearer market direction.

The Current Plan: Staff uses its investment plan to put the Council-adopted investment policy strategies into effect. The plan guides daily purchases and is based on regular evaluations of macro-economic trends and cycles, and expectations about future interest rate trends. Staff formulates and updates the plan throughout the year. For example, when rates were relatively high and expected to fall, longer term investments were purchased to lock-in the high rates. Bonds purchased one to four years ago have somewhat slowed the rate of descent of the portfolio’s yield.

Presently, rates are very low and are likely to stay in this range for at least the next twelve to eighteen months with occasional, temporary rate upticks. The City is unable to invest new money it receives (call proceeds, property taxes, etc.) at rates even close to what was available just one year ago. The financial upheaval has reduced the apparent safety of some investment opportunities the City previously used, such as commercial paper issued by larger financial corporations. Staff’s current operating plan is to maintain higher than normal liquidity in the money market account (which purchases only the safest of investments: U.S. Treasury-issued notes and bills) and the California Local Agency Investment Fund (LAIF). This extra cash is available for unexpected interruptions to City revenues and to buffer any monies retained by the State of California to handle its budget emergency. The extra cash will be

available to purchase higher yielding longer-term investments if and when rates start moving higher. This approach is unchanged from one year ago.

Staff's outlook is for market interest rates to remain relatively unchanged during this fiscal year. If the current recovery is able to gain some momentum, it is possible interest rates on new purchases may begin to increase sometime in fiscal year 2012/13. These higher rates are expected to correlate with anticipated inflation that will be needed by the federal government to "inflate away" some of the massive debt obligations it has assumed during the current recession. LAIF's daily rate is in the 0.5% range now, and is not expected to change significantly during this fiscal year. Continuing slack in the economy, combined with the effects of the end of the stimulus programs and the expected continuing high national unemployment rates, results in the stagnant investment environment in which the City finds itself.

Until there is evidence of a real change in economic fundamentals, such as in the unemployment rate, inflation, GDP, and productivity data, staff recommends maintaining higher than normal liquidity levels. Staff will seek to take advantage of any market fluctuations that do occur to buy select investments offering relatively higher interest rates, given these market conditions. LAIF will continue to constitute higher than normal percentages of the portfolio under this plan.

Subject to the City Council's approval of this investment strategy, staff asks the Council to delegate authority to the Finance Director/Treasurer to manage the portfolio in fiscal year 2011/12 in accordance with the Council's long established policy objectives of earning a market-reasonable rate of return within the overriding constraints of portfolio safety and adequate liquidity.

ENCLOSURES:

- [Draft Resolution](#)
- [Exhibit A – Statement of Investment Policy \(FY 2011/12\)](#)
- [Exhibit A – State of Investment Policy \(FY 2011/12\), marked to show changes from FY 2010/11 policy](#)

RECOMMENDATION: Adopt a resolution delegating the City Council's authority to invest and reinvest public funds, and to sell or exchange securities so purchased, to the Finance Director/City Treasurer for one year or until earlier revoked by the City Council; and approving the City's investment policy statement for FY 2011/12.

***2.8 PROFESSIONAL ENGINEERS AND TECHNICIANS ASSOCIATION MOU**
Consideration of a Resolution Approving a New Memorandum of Understanding (2011-2013) with the Professional Engineers and Technicians Association (PETA)

Contact Person:

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Executive Summary: In August 2011, the City of Fremont completed negotiations with the Professional Engineers and Technicians Association (PETA) for a two-year labor agreement. This bargaining unit has 26 members and represents various engineers and technical classifications. The proposed MOU contains the following significant changes from the prior agreement term: total compensation reductions, a second tier retirement benefit for new employees, and a continued cap on retiree medical benefits for employees. Otherwise, the provisions of the former MOU are generally carried forward.

BACKGROUND: On March 1, 2011, the City Council adopted labor relations guidelines to support City staff's efforts to address the City's ongoing General Fund structural imbalance caused by rising personnel costs and recession-related decreased revenue. The guidelines directed staff to address both short-term imbalances and the long-term fiscal sustainability of the City, as follows:

1. Focus on the cost of total compensation while considering the City's fiscal condition and revenue projections
2. Use short-term and long-term strategies to curtail escalating benefit costs, such as wellness programs and other cost containment initiatives
3. Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction set by the City Council
4. Remain mindful of other increasing costs, including the retiree healthcare liability
5. To the extent possible, preserve the City's ability to be a competitive employer in the local labor market

The City and PETA bargaining teams held nine negotiations meetings and reached tentative agreement on August 16, 2011. PETA has ratified the tentative agreement.

DISCUSSION/ANALYSIS:

Primary Memorandum of Understanding Provision Changes:

1. *Compensation Reduction:*
Effective August 19, 2011, employee salaries were reduced by 4.427% (the fiscal year equivalent of 4.25%).

Beginning on July 1, 2012 and continuing throughout Fiscal Year 2012/13, the salary deduction will be 4.25%.

2. *Second Tier Retirement Benefit:*

Effective January 1, 2012, new employee retirement benefits will consist of the two percent (2%) at sixty years of age (60) formula based on the three (3) highest consecutive years of pay average and a 2% COLA.

FISCAL IMPACT:

Fiscal Impact of the Memorandum of Understanding Changes:

MOU Change	Anticipated Fiscal Impact
Compensation Reduction	(\$135,000)
Second Tier Retirement	Long Term Structural Savings

The proposed MOU satisfies Council direction by reducing total compensation, and pursuing long-term fiscal sustainability. The agreement is the result of a productive partnership between management staff and the bargaining unit to help address the City's unprecedented structural budget imbalance.

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: [Draft Resolution](#)

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) for the period of July 1, 2011 through June 30, 2013 between the City and the Professional Engineers and Technicians Association (PETA) and authorize the City Manager to execute the MOU.

***2.9 FREMONT ASSOCIATION OF MANAGEMENT EMPLOYEES MOU**
Consideration of a Resolution approving a new Memorandum of Understanding (2011-2013) with the Fremont Association of Management Employees (FAME)

Contact Person:

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Executive Summary: On August 23, 2011, the City of Fremont completed negotiations with the Fremont Association of Management Employees (FAME) for a two-year labor agreement. This bargaining unit has 94 members and represents a variety of managers throughout the City. The proposed MOU contains the following significant changes from the prior agreement term: total compensation reductions, a second tier retirement benefit for new employees, a reduction in health benefit allowance alternative benefits and compensation plan, and a reduced cap on retiree medical benefits for new employees. Otherwise, the provisions of the former MOU are generally carried forward.

BACKGROUND: On March 1, 2011, the City Council adopted labor relations guidelines to support City staff's efforts to address the City's ongoing General Fund structural imbalance caused by rising personnel costs and recession-related decreased revenue. The guidelines directed staff to address both short-term imbalances and the long-term fiscal sustainability of the City, as follows:

1. Focus on the cost of total compensation while considering the City's fiscal condition and revenue projections
2. Use short-term and long-term strategies to curtail escalating benefit costs, such as wellness programs and other cost containment initiatives
3. Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction set by the City Council
4. Remain mindful of other increasing costs, including the retiree healthcare liability
5. To the extent possible, preserve the City's ability to be a competitive employer in the local labor market

The City and FAME bargaining teams held 4 negotiations meetings and reached tentative agreement on August 23, 2011. FAME ratified this agreement on August 25, 2011.

DISCUSSION/ANALYSIS:

Primary Memorandum of Understanding Provision Changes:

1. *Compensation Reduction:*
Effective August 19, 2011, Miscellaneous FAME employees will contribute 5.75% of salaries to offset a portion of the 22.916% employer CalPERS required contribution pursuant to California Government Code 20516.

Effective August 19, 2011, Safety FAME employees will contribute 6.3% of salaries to offset a portion of the 36.538% employer CalPERS required contribution pursuant to California Government Code 20516.

Beginning on July 1, 2012 and continuing throughout the Fiscal Year 2012/13, Miscellaneous employees will contribute 5.29% of salaries to offset a portion of the 23.9% (projected) employer CalPERS required contribution pursuant to California Government Code 20516.

Beginning on July 1, 2012 and continuing throughout the Fiscal Year 2012/13, Safety employees will contribute 5.8% of salaries to offset a portion of the 38.4% (projected) employer CalPERS required contribution pursuant to California Government Code 20516.

2. *Second Tier Retirement Benefit:*

Effective January 1, 2012, new Miscellaneous employee retirement benefits will consist of the two percent (2%) at sixty years of age (60) formula based on a three (3) highest consecutive years of pay average and annual COLA limited to 2%.

Effective January 1, 2012, new Safety employee retirement benefits will consist of 3% at 55 based on a three (3) highest consecutive years of pay average and an annual COLA limited to 2%.

3. *Health Benefit Allowance Alternative Benefits and Compensation Plan:*

Effective June 30, 2013, health benefit allowance alternative benefits cash back will be capped at a maximum of five hundred eighty dollars (\$580) per month per employee.

4. *Retiree Medical Benefit:*

Effective January 1, 2012, retiree medical benefits for newly hired employees will be limited to \$10 per month per year of service from 5 to 24 years, and limited to five hundred dollars (\$500) per month for employees with 25 or more years of service.

FISCAL IMPACT:

Fiscal Impact of the Memorandum of Understanding Changes:

MOU Change	Anticipated Fiscal Impact
Compensation Reduction	(\$577,248)
Health Benefit Allowance Reduction	(\$39,864)
Retiree Medical Benefit Reduction	Long-Term Structural Savings
Second Tier Retirement	Long-Term Structural Savings

The proposed MOU satisfies Council direction by reducing total compensation, and pursuing long-term fiscal sustainability via changes to health and retirement benefits. The agreement is the result of a

productive partnership between management staff and the bargaining unit to help address the City's unprecedented structural budget imbalance.

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: [Draft Resolution](#)

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) for the period of July 1, 2011 through June 30, 2013 between the City and the Fremont Association of Management Employees (FAME) and authorize the City Manager to execute the MOU.

***2.10 TEAMSTERS, LOCAL 856 MEMORANDUM OF UNDERSTANDING (MOU)
Consideration of a Resolution Approving a new Memorandum of Understanding (2011 – 2013) with Teamsters Local 856 MOU**

Contact Person:

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Executive Summary: In August 2011, the City of Fremont reached a mediated settlement with Teamsters Local 856 for a two-year labor agreement. The bargaining unit has 56 members and represents Police Communication Dispatchers, Police Detention Technicians and Community Service Officers among other non-sworn employees in the Police Department. The proposed MOU contains the following significant changes from the prior agreement term: total compensation reductions, a second tier retirement benefit for new employees and a new community policing schedule. Otherwise, the provisions of the former MOU are generally carried forward.

BACKGROUND: On March 1, 2011, the City Council adopted labor relations guidelines to support City staff's efforts to address the City's ongoing General Fund structural imbalance caused by rising personnel costs and recession-related decreased revenue. The guidelines directed staff to address both short-term imbalances and the long-term fiscal sustainability of the City, as follows:

1. Focus on the cost of total compensation while considering the City's fiscal condition and revenue projections
2. Use short-term and long-term strategies to curtail escalating benefit costs, such as wellness programs and other cost containment initiatives
3. Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction set by the City Council
4. Remain mindful of other increasing costs, including the retiree healthcare liability
5. To the extent possible, preserve the City's ability to be a competitive employer in the local labor market

The City and the Teamsters bargaining teams held six negotiations meetings and reached tentative agreement through mediation on August 26, 2011. Teamsters Local 856 is scheduled to ratify the tentative agreement on August 31 and September 1, 2011 and the results will be available on Friday, September 2, 2011.

DISCUSSION/ANALYSIS:**Primary Memorandum of Understanding Provision Changes:**1. *Compensation Reduction:*

Effective August 28, 2011, employees will contribute 4.12% (Fiscal Year equivalent of 3.63%) of salaries to offset a portion of the 22.916% employer CalPERS required contribution pursuant to California Government Code 20516.

2. *Elimination of Holiday Overtime Pay:*

Effective upon ratification, employees working in twenty-four hour operations will no longer receive overtime pay when working holidays.

3. *Second Tier Retirement Benefit:*

Effective January 1, 2012, new employee retirement benefits will consist of two percent (2%) at sixty (60) years of age formula based on a three (3) highest consecutive years of pay average and a two percent (2%) COLA.

4. *Community Policing Schedule:*

Move from eleven-hour rotational shifts to a ten-hour rotational shift schedule (2,080 hours per year).

FISCAL IMPACT:**Fiscal Impact of the Memorandum of Understanding Changes:**

MOU Change	Anticipated Fiscal Impact
Compensation Reduction	(\$216,000)
Second Tier Retirement	Long-Term Structural Savings

The proposed MOU satisfies Council direction by reducing total compensation, pursuing long-term fiscal sustainability via changes to health and retirement benefits, and improving operational efficiencies via scheduling changes that will reduce overtime expenditures. The agreement is the result of a productive partnership between management staff and the bargaining unit to help address the City's unprecedented structural budget imbalance.

ENVIRONMENTAL REVIEW: N/A**ENCLOSURE:** [Draft Resolution](#)

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) for the period of July 1, 2011 through June 30, 2013 between the City and Teamsters Local 856, and authorize the City Manager to execute the MOU.

5.1 DUTRA PROPERTY REZONE/REVERSION TO ACREAGE –1481 MOWRY AVENUE (VACANT LOT)

Public Hearing (Published Notice) to Consider Final Tract Map 8089 for a Reversion to Acreage of a Vacant 0.61-Acre Parcel which was Previously Approved for a 10-Lot Residential Subdivision, and a Rezoning of the Property from Planned District P-2001-174 to Multi-Family Residence, R-3-23. (PLN2011-00273)

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Executive Summary: The applicant is proposing to revert the subject property to acreage and rezone it from a Precise Planned District for a 10-unit residential condominium development (P-2001-174) to Multi-Family Residence, R-3-23. The property was rezoned to Planned District P-2001-174 by the City Council in May 2002, and the final map for Tract 7479 for the condominium subdivision was approved by the Council in November 2005. The Reversion to Acreage would undo the 10-unit condominium subdivision and remove all easements that were established through the recordation of Tract Map 7479. The rezoning would rescind the Precise Planned District for the 10-unit condominium development.

On July 28, 2011, the Planning Commission considered the rezoning request and recommended City Council approval in accordance with staff's recommendation. Reversion to Acreage applications go directly to City Council for approval; as such, the Planning Commission did not take any action on the proposed reversion. Staff recommends that the City Council introduce an ordinance rezoning the subject property from Planned District P-2001-174 to Multi-Family Residence, R-3-23 as shown in Exhibit "A", and approve Final Map 8089 for a Reversion to Acreage as shown in Exhibit "B", based on the findings and subject to the conditions of approval contained in Exhibit "C".

BACKGROUND: The subject property originally housed a two-story farm house with a barn and various outbuildings dating back to the late 1800's. The house and most of the outbuildings were eventually demolished with permits in 2002, with the exception of the barn (referred to locally as the "Santos Barn") which was preserved and relocated to Shinn Historic Park in 2007-2008.

On March 27, 2001, the City Council approved a General Plan Amendment to change the land use designation of the property from Low Density Residential 5-7 Units per Acre to Medium Density Residential 18-23 Units per Acre (PLN2000-00077) to allow development of the site with a residential condominium project. On May 14, 2002, the City Council adopted an ordinance approving the rezoning of the property from R-1-6 Single-Family Residence to a Precise Planned District (P-2001-174) specifically for a 10-unit residential condominium development (PLN2001-00174). On November 20, 2003, the Planning Commission approved Tentative Tract Map 7479 and a Planned District Minor Amendment to allow various architectural modifications to the previously approved plans for the condominium units (PLN2003-00253). The final map for Tract 7479 was approved and recorded in November 2005. The condominium project was not constructed, and in June 2011 the applicant

submitted the current applications to revert the property to acreage and rezone it from Planned District P-2001-174 to Multi-Family Residence, R-3-23.

DISCUSSION/ANALYSIS:

Project Description: The applicant is proposing to rezone the subject property from a Precise Planned District for a 10-unit residential condominium development (P-2001-174) to Multi-Family Residence, R-3-23. In addition, the applicant is requesting approval of a Reversion to Acreage to revert the 10-lot subdivision to a single parcel and remove all easements and other encumbrances from the lot that were established through the recordation of Tract Map 7479.

General Plan Conformance: The existing General Plan land use designation for the site is Medium Density Residential 18-23 units per acre. This land use designation was approved by the City Council in March 2001 prior to the approval of the rezoning which established the Precise Planned District for the 10-unit residential condominium development. The applicant is not proposing to change the General Plan land use designation; instead he is only proposing to rescind the Planned District and replace it with a standard R-3-23 zoning designation. The R-3-23 zoning designation requires new multi-family residential developments to fall within the range of 20.5 to 23.0 units per acre. As such, the proposed rezoning is consistent with the General Plan land use designation of 18-23 units per acre.

Zoning Ordinance Compliance: The project site is currently zoned as Planned District (or P District) P-2001-174, a P District whose guidelines were modeled after the provisions of the R-G Garden Apartment Residence zoning district, the closest applicable zoning classification at the time of the P District's adoption in May 2002. P District P-2001-174 was established to allow for the development of a 10-unit residential condominium project on the property. Shortly thereafter in 2003, the City Council created the R-3 Multi-Family Residence zoning classification to allow for multi-family developments such as townhouses and condominiums similar to those that were approved under P District P-2001-174 in areas suited for medium, high, and very high density housing along major thoroughfares and/or near transit hubs.

Since the condominium project would have more closely resembled the present-day R-3 Multi-Family Residence zoning classification as opposed to the R-G Garden Apartment Residence classification, staff has directed the applicant to rezone the property to an R-3 zoning classification today to facilitate future residential development on the property should a developer ever decide to move forward with new plans for a medium- or high-density residential project.

FINDINGS FOR APPROVAL:

Rezoning: Article 18.1 of the Zoning Ordinance (Chapter 2 of FMC Title VIII) includes a standard to consider the viability of P Districts after four years from the date of their adoption and determine if the P District is still in the best interest of the public. As more than nine years have now elapsed since the approval and adoption of P District P-2001-174 and the project still has not been constructed, staff finds there is no public benefit in maintaining the P District zoning any longer. Per FMC Section 8-23108, the City Council must make the following findings in order to approve a rezoning:

- (1) The proposed rezoning is in general conformance with the General Plan; and
- (2) The public necessity, convenience, and general welfare require the adoption of the proposed rezoning.

Discussion:

- (1) The proposed rezoning is in general conformance with the General Plan in that it allows medium density residential development on the property consistent with the density range currently prescribed by the General Plan should the property's owner decide to propose such development in the future. In the mean time, it will provide the opportunity for the property to be developed with a land use that is presently more viable than the previously approved residential condominium project; and
- (2) The public necessity, convenience, and general welfare require the adoption of the proposed rezoning in that at the present time, the subject property will not be developed with a residential development in accordance with the previously approved P District. As such, planning staff recommends that the property be rezoned from P District P-2001-1074 to an R-3-23 zoning designation. The current land use designation of the property is Medium Density Residential 18-23 units per acre, so rezoning the property to R-3-23 will make the zoning consistent with the current General Plan, help to avoid any confusion regarding permitted land uses for the property, and facilitate the development of the site today with a more viable land use or new land use plan.

Reversion to Acreage: Per FMC Section 8-1705, and in accordance with §66499.16 of the California Subdivision Map Act, in order to approve a Reversion to Acreage the City Council must make the following findings:

- (a) Dedications or offers of dedication to be vacated or abandoned by the proposed Reversion to Acreage are unnecessary for present or prospective public purposes; and
- (b) Either:
 - (1) All owners of an interest in the real property within the subdivision have consented to reversion; or
 - (2) None of the improvements required to be made has been made within two years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is later; or
 - (3) No lots shown on the final or parcel map have been sold within five years from the date such map was filed for record.

Discussion:

- (a) The dedications established through the recording of Tract Map 7479 which will be vacated by the proposed Reversion to Acreage are unnecessary for present or future public purposes in that they were only germane to the 10-unit residential condominium project that was allowed through the approval of P District P-2001-174. The property dedications on Tract Map 7479 were site specific, based upon the project design for access, utility and emergency vehicle access. Since that project will not be built and the property will be rezoned from a Precise Planned District to the more general Multi-Family Residence R-3-23 zoning designation, there is no longer any public purpose for the dedications.

- (b) Although the final map for Tract 7479 was recorded in 2005, the applicant never sold any of the parcels. The applicant and present owner, Dutra Enterprises, Inc., is the sole owner of interest in the property being reverted to acreage, so the consent of no other parties is needed.

Based on the above discussion, it is staff's opinion that the findings prescribed by FMC Section 8-1705 and §66499.16 of the Subdivision Map Act can be made in support of the proposed Reversion to Acreage.

Planning Commission Action: On July 28, 2011, the Planning Commission considered the proposed rezoning and unanimously recommended City Council approval (5-0 w/ one commissioner recusing and one absent). The Planning Commission did not consider the proposed Reversion to Acreage as such requests are not under the Planning Commission's purview. Reversions to Acreage are under the sole purview of the City Council.

Impact Fees: The applicant will not be required to pay impact fees for the proposed rezoning because no development is proposed at this time. When a building permit application is submitted to develop the property, the developer will be required to pay the applicable impact fees in effect at the time building permits are issued to construct that project.

FISCAL IMPACT: Not applicable.

ENVIRONMENTAL REVIEW: The proposed rezoning is exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15061(b)(3) in that it is not a project which has the potential to have a significant impact on the environment because it will not change the allowable residential use of the property in a manner that is inconsistent with the current General Plan land use designation. The proposed Reversion to Acreage is also exempt from CEQA pursuant to Guideline 15305, Minor Alterations in Land Use Limitations.

ENCLOSURES:

- [Draft Ordinance](#)
- [Draft Resolution](#)
- [Exhibit "A" – Rezoning Map](#)
- [Exhibit "B" – Final Map 8089 \(Reversion to Acreage of Tract 7479\)](#)
- [Exhibit "C" – Recommended Findings and Conditions of Approval](#)
- [Informational #1 – Project Summary Data](#)

RECOMMENDATION:

1. Hold public hearing;
2. Find that the proposed rezoning is categorically exempt from the California Environmental Quality Act (CEQA) per Guideline 15061(b)(3) in that it is not a project that has the potential to have a significant impact on the environment, and that the proposed Reversion to Acreage is exempt from CEQA per Guideline 15305 which exempts minor alterations in land use limitations;
3. Find the project consistent with the General Plan for the reasons enumerated in this staff report;
4. Determine that the findings required pursuant to FMC Section 8-1705 and §66499.16 of the Subdivision Map Act can be made in support of the proposed Reversion to Acreage based on the findings set forth in Exhibit "C";

5. Adopt a resolution approving Final Map 8089, a Reversion to Acreage of Tract 7479, as shown on Exhibit “B”, based on the findings set forth in Exhibit “C”;
6. Find that the proposed Rezoning fulfills the applicable requirements set forth in Section 8-23108 of the Fremont Municipal Code based on the findings and subject to the conditions set forth in Exhibit “C”;
7. Introduce an ordinance rezoning the property from Precise Planned District (P-2001-174) to Multi-Family Residence, R-3-23, as shown on Exhibit “A”; and
8. Direct staff to prepare and the clerk to publish a summary of the ordinance.

6.1 Report Out from Closed Session of Any Final Action

8.1 Council Referrals

8.1.1 MAYOR WASSERMAN REFERRAL: Appointments to the Senior Citizens Commission and the Youth Advisory Commission.

Appointment:

<i>Advisory Body</i>	<i>Appointee</i>	<i>Term Expires</i>
Senior Citizens Commission	Kathryn Kimberlin	December 31, 2014
Youth Advisory Commission	Rahil Hudda	December 31, 2011
Youth Advisory Commission	Rhea Nayak	December 31, 2011
Youth Advisory Commission	Meghna Srivastava	December 31, 2012

ENCLOSURES: [Commission Applications](#)

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD.....	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA.....	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD.....	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS.....	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF.....	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
September 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 20, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 27, 2011		No Council Meeting		
October 3, 2011	4-6 p.m.	Joint Council/FUSD Meeting	Council Chambers	Live
October 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 18, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 25, 2011		No Council Meeting		
November 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 15, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 22, 2011		No Council Meeting		
November 29, 2011		No Council Meeting		
December 6, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 20, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 27, 2011		No Council Meeting		